

General Information Letter: Institution that operates a day care and kindergarten, but does not offer grade 1 or higher, is not a school within the meaning of Section 26-1 of the School Code and so tuition for kindergarten at that institution does not qualify for the credit.

September 20, 2002

Dear:

This is in response to your request for a letter ruling. The nature of your request and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at www.revenue.state.il.us.

In an undated letter faxed to Paula Hamrock, you state the following:

I received your LTR-402 Error Notice Response yesterday. I'd like to know how you come up with your determination that my daughter's kindergarten education is not qualified for education expenses.

According to the listed statement in the Schedule ED Credit for Qualified Education Expenses, which I quoted as follows:

Your student must have

- Been enrolled in kindergarten through twelfth grade, and
- Been a full-time student, and
- Been an Illinois resident, and
- Attended an Illinois school, and
- Been under the age of 21 at the close of the school year.

Review my daughter's status against all the above criteria, I believe that tuition expenses incurred during her kindergarten education should be qualified.

- She was enrolled in a kindergarten, and
- She was a full-time student, and
- She was an Illinois resident, and
- She attended an Illinois school (School certification was sent to Rita) and
- She was under the age of 21 at the close of the school year.

Talking to a professional tax preparer, based on the information I presented, I was told that the educational expenses for Ms. Z should be qualified. So, I would like to know the criteria you used to base your determination.

The certification to which your letter refers is a letter dated April 4, 2002, from Ms. Y of DAY CARE CENTER, stating that your daughter attended kindergarten at the DAY CARE CENTER at STREET in CITY during 2000-2001. In a letter dated May 13, 2002, Ms. Y also stated that "DAY CARE CENTER follows the Illinois school code Section 26-1."

Telephone conversations with you and with Ms. Y have confirmed my understanding that DAY CARE CENTER operates a day care center which offers a kindergarten program. It does not offer education at grade 1 or higher.

Response

Section 201(m) of the Illinois Income Tax Act (35 ILCS 5/201) allows a credit for qualified education expense incurred at a qualifying school. That section defines qualifying school as "any public or nonpublic elementary school in Illinois in compliance with Title VI of the Civil Rights Act of 1964 and attendance at which satisfies the requirements of Section 26-1 of the School Code."

Section 26-1 of the School Code (105 ILCS 5/26-1) provides:

Whoever has custody or control of any child between the ages of 7 and 16 years shall cause such child to attend some public school in the district wherein the child resides the entire time it is in session during the regular school term.

Section 26-2 of the School Code (105 ILCS 5/26-2) clarifies that mandatory attendance is required for grades 1 through 12, not for kindergarten. In *Possekel v. O'Donnell*, 51 Ill. App. 3d 313 (1st Dist. 1977), the Illinois Appellate Court held that an institution offering nursery school and kindergarten, but not grade 1 or higher education, was not a school within the meaning of Section 26-1. Only if the institution offered grade 1 or higher education would the kindergarten be considered part of a school under Section 26-1.

Accordingly, you are not allowed a credit for expenses incurred at the DAY CARE CENTER because the DAY CARE CENTER is not a qualifying school.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b). If you have any further questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton
Deputy General Counsel -- Income Tax